

## Senate Bill No. 984

### CHAPTER 323

An act to amend Sections 7950, 8708, and 8709 of the Family Code, and to amend Sections 15100 and 16120 of the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor September 4, 2003. Filed  
with Secretary of State September 5, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 984, Scott. Dependent children: Welfare Advance Fund payments: adoptions.

(1) Existing law requires agencies responsible for the placement of foster children, or the placement of foster children for adoption, to take into consideration specified matters in placing those children.

The Indian Child Welfare Act establishes requirements regarding the custody of children covered by that act.

This bill would provide that the above provisions of existing law shall not be construed to affect the application of the Indian Child Welfare Act.

(2) Existing law authorizes an agency placing a child in foster care, or the State Department of Social Services or licensed adoption agency to which a child has been freed for adoption, to consider specified matters relating to the cultural, ethnic, or racial background of the child, and the capacity of the prospective foster parents or adoptive parents, as appropriate, to meet the needs of the child.

This bill would eliminate those provisions.

(3) Existing law establishes various aid and medical assistance programs, also known as public assistance programs.

Existing law establishes in the State Treasury the Welfare Advance Fund, and provides that moneys in this revolving fund are to be appropriated for the purpose of making payments or advances to counties and the Employment Development Department with respect to specified programs.

This bill instead would provide that moneys in the fund are appropriated for the purpose of making payments or advances to counties, Indian tribes, the federal Social Security Administration, or other federal, state, or local governmental entities, of the state and federal shares of local assistance programs, and for the payment of refunds. It would also authorize the use of funds from the Welfare Advance Fund for the purpose of making a consolidated payment,

comprised of the state and federal shares of local assistance costs, to any payee associated with programs administered by the State Department of Social Services.

Because this bill would permit moneys in this appropriated fund to be used for a new purpose, it would constitute an appropriation.

(4) The Adoption Assistance Program, administered by the State Department of Social Services and each county, requires the payment of aid to adoptive families, based on the needs of program-eligible children adopted by those families.

Under existing law, one of the bases upon which a child will be eligible for adoption assistance benefits is if the child meets specified criteria, including, among others, a requirement that the child is the subject of an agency adoption, as defined, in specified circumstances.

Under the federal Social Security Act, qualified low-income aged, blind, and disabled persons are eligible to receive cash payments.

This bill, as an alternative to the requirement that the child be the subject of an agency adoption, would establish eligibility for Adoption Assistance Program benefits for a child who is otherwise eligible for program benefits and who, at the time a petition for either an agency adoption, as defined, or an independent adoption, as defined, is filed, has met the requirements for federal SSI benefits, as determined and documented by the federal Social Security Administration.

Because moneys are continuously appropriated from the State Treasury to each county to pay for a share of the cost of adoption assistance payments, the bill would constitute an appropriation.

Because the bill would expand the class of persons eligible for adoption assistance payments, it would impose additional duties upon local agencies, thereby creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 7950 of the Family Code is amended to read:



7950. (a) With full consideration for the proximity of the natural parents to the placement so as to facilitate visitation and family reunification, when a placement in foster care is being made, the following considerations shall be used:

(1) Placement shall, if possible, be made in the home of a relative, unless the placement would not be in the best interest of the child. Diligent efforts shall be made to locate an appropriate relative. Before any child may be placed in long-term foster care, each relative whose name has been submitted to the agency as a possible caretaker, either by himself or herself or by other persons, shall be evaluated as an appropriate placement resource.

(2) No agency or entity that receives any state assistance and is involved in foster care placements may do either of the following:

(A) Deny to any person the opportunity to become a foster parent on the basis of the race, color, or national origin of the person or the child involved.

(B) Delay or deny the placement of a child into foster care on the basis of the race, color, or national origin of the foster parent or the child involved.

(b) Subdivision (a) shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

(c) Nothing in this section precludes a search for an appropriate relative being conducted simultaneously with a search for a foster family.

SEC. 2. Section 8708 of the Family Code is amended to read:

8708. (a) Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do any of the following:

(1) Deny to any person the opportunity to become an adoptive parent on the basis of the race, color, or national origin of the person or the child involved.

(2) Delay or deny the placement of a child for adoption on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(3) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this paragraph, an approved adoptive family means a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially



meet the standards and criteria established in California adoption regulations.

(b) This section shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

SEC. 3. Section 8709 of the Family Code is amended to read:

8709. (a) The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may consider the child's religious background in determining an appropriate placement.

(b) This section shall not be construed to affect the application of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 and following).

SEC. 4. Section 15100 of the Welfare and Institutions Code is amended to read:

15100. A revolving fund in the State Treasury is hereby created to be known as the Welfare Advance Fund. All moneys in the fund are appropriated for the purpose of making payments or advances to counties, Indian tribes, the federal Social Security Administration, or other federal, state, or governmental entities, of the state and federal shares of local assistance programs, and for the payment of refunds. In addition, the fund may be used for the purpose of making a consolidated payment, comprised of the state and federal shares of local assistance costs, to any payee associated with programs administered by the State Department of Social Services.

Payments or advances of funds to counties, Indian tribes, the federal Social Security Administration, or other federal, state, or governmental entities, or to any payee, which payments or advances are properly chargeable to appropriations made from other funds in the State Treasury, may be made by Controller's warrant drawn against the Welfare Advance Fund. For every warrant so issued, the several purposes and amounts for which it was drawn shall be identified for the payee.

The amounts to be transferred to the Welfare Advance Fund at any time shall be determined by the department, and, upon order of the Controller, shall be transferred from the funds and appropriations otherwise properly chargeable therewith to the Welfare Advance Fund.

Refunds of amounts disbursed from the Welfare Advance Fund shall, on order of the Controller, be deposited in the Welfare Advance Fund, and, on order of the Controller, shall be transferred therefrom to the funds and appropriations from which the amounts were originally derived. Claims for amounts erroneously paid into the Welfare Advance Fund shall be submitted by the department to the Controller who, if he or she approves the claims, shall draw his or her warrant in payment thereof against the Welfare Advance Fund.



All amounts increasing the cash balance in the Welfare Advance Fund, which were derived from the cancellation of warrants issued therefrom, shall, on order of the Controller, be transferred to and in augmentation of the appropriations from which the amounts were originally derived.

SEC. 5. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) through (g), inclusive, are met or if the conditions specified in subdivision (h) are met.

(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a developmental disability as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care as described in Section 11464.

(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child meets either of the following criteria:

(1) At the time a petition for an agency adoption, as defined in Section 8506 of the Family Code, or an independent adoption, as defined in Section 8524 of the Family Code, is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(2) The child is the subject of an agency adoption as defined in Section 8506 of the Family Code and was any of the following:

(A) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.



(B) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(C) Committed to the care of the department pursuant to Section 8805 or 8918 of the Family Code.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) A child shall be eligible for Adoption Assistance Program benefits if the child received Adoption Assistance Program benefits with respect to a prior adoption and the child is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's adoptive parents died.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

